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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

BLUE SPIKE, LLC, BLUE SPIKE
INTERNATIONAL LTD., and
WISTARIA TRADING LTD.,

Plaintiffs/Counterclaim
Defendants,

v.

PANDORA MEDIA, INC.,

Defendant/Counterclaim
Plaintiff.

Case No.: 2:19-cv-00748-JAK-JPR

PROTECTIVE ORDER

DISCOVERY MATTER

Referred to Magistrate Judge Jean P.
Rosenbluth

NOTE: CHANGES MADE BY THE COURT

1. PURPOSE AND LIMITS OF THIS ORDER

Discovery in this action is likely to involve confidential, proprietary or private information requiring special protection from public disclosure and from use for any purpose other than this litigation. Thus, the Court enters this Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it gives from public disclosure and use extends only to the specific material entitled to confidential treatment under the applicable legal principles. This Order does not automatically authorize the filing under seal of material designated under this Order. Instead, the parties must comply with Local Rule 79-5.1 and this Order if they seek to file anything under seal. This Order does not govern the use at trial of material designated under this Order.

2. DESIGNATING PROTECTED MATERIAL

2.1 Over-Designation Prohibited. Any party or non-party who designates information or items for protection under this Order as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” (a “designator”) must only designate specific material that qualifies under the appropriate standards. To the extent practicable, only those parts of documents, items or oral or written communications that require protection shall be designated. Designations with a higher confidentiality level when a lower level would suffice are prohibited. Mass, indiscriminate, or routinized designations are prohibited. Unjustified designations expose the designator to sanctions, including the Court’s striking all confidentiality designations made by that designator. Designation under this Order is allowed only if the designation is necessary to protect material that, if disclosed to persons not authorized to view it, would cause competitive or other recognized harm. Material may not be designated if it has been made public, or if designation is otherwise unnecessary to protect a secrecy interest. If a designator learns that information or items that it designated for protection do not qualify for protection at

1 all or do not qualify for the level of protection initially asserted, that designator must
2 promptly notify all parties that it is withdrawing the mistaken designation.

3 **2.2 Manner and Timing of Designations.** Designation under this Order
4 requires the designator to affix the applicable legend (“CONFIDENTIAL,” “HIGHLY
5 CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY CONFIDENTIAL –
6 SOURCE CODE”) to each page that contains protected material. For testimony given in
7 deposition or other proceeding, the designator shall specify all protected testimony and
8 the level of protection being asserted. It may make that designation during the deposition
9 or proceeding, or may invoke, on the record or by written notice to all parties on or
10 before the next business day, a right to have up to 21 days from the deposition or
11 proceeding to make its designation.

12 **2.2.1** A party or non-party that makes original documents or materials
13 available for inspection need not designate them for protection until after the inspecting
14 party has identified which material it would like copied and produced. During the
15 inspection and before the designation, all material shall be treated as HIGHLY
16 CONFIDENTIAL – ATTORNEY EYES ONLY. After the inspecting party has identified
17 the documents it wants copied and produced, the producing party must designate the
18 documents, or portions thereof, that qualify for protection under this Order.

19 **2.2.2** Parties shall give advance notice if they expect a deposition or other
20 proceeding to include designated material so that the other parties can ensure that only
21 authorized individuals are present at those proceedings when such material is disclosed or
22 used. The use of a document as an exhibit at a deposition shall not in any way affect its
23 designation. Transcripts containing designated material shall have a legend on the title
24 page noting the presence of designated material, and the title page shall be followed by a
25 list of all pages (including line numbers as appropriate) that have been designated, and
26 the level of protection being asserted. The designator shall inform the court reporter of
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these requirements. Any transcript that is prepared before the expiration of the 21-day period for designation shall be treated during that period as if it had been designated **HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY** unless otherwise agreed. After the expiration of the 21-day period, the transcript shall be treated only as actually designated.

2.3 Inadvertent Failures to Designate. An inadvertent failure to designate does not, standing alone, waive protection under this Order. Upon timely assertion or correction of a designation, all recipients must make reasonable efforts to ensure that the material is treated according to this Order.

3. CHALLENGING CONFIDENTIALITY DESIGNATIONS

All challenges to confidentiality designations shall proceed under Local Rule 37-1 through Local Rule 37-4.

4. ACCESS TO DESIGNATED MATERIAL

4.1 Basic Principles. A receiving party may use designated material only for this litigation. Designated material may be disclosed only to the categories of persons and under the conditions described in this Order.

4.2 Disclosure of CONFIDENTIAL Material Without Further Approval. Unless otherwise ordered by the Court or permitted in writing by the designator, a receiving party may disclose any material designated CONFIDENTIAL only to:

4.2.1 The receiving party's outside counsel of record in this action and employees of outside counsel of record to whom disclosure is reasonably necessary;

4.2.2 The officers, directors, and employees of the receiving party to whom disclosure is reasonably necessary, and who have signed the Agreement to Be Bound (Exhibit E-1);

4.2.3 Experts retained by the receiving party's outside counsel of record to

whom disclosure is reasonably necessary, and who have signed the Agreement to Be Bound (Exhibit E-1);

4.2.4 The Court and its personnel;

4.2.5 Outside court reporters and their staff, professional jury or trial consultants, and professional vendors to whom disclosure is reasonably necessary, and who have signed the Agreement to Be Bound (Exhibit E-1);

4.2.6 During their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the Agreement to Be Bound (Exhibit E-1); and

4.2.7 The author or recipient of a document containing the material, or a custodian or other person who otherwise possessed or knew the information.

4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without Further Approval. Unless permitted in writing by the designator, a receiving party may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE without further approval only to:

4.3.1 The receiving party's outside counsel of record in this action and employees of outside counsel of record to whom it is reasonably necessary to disclose the information;

4.3.2 The Court and its personnel;

4.3.3 Outside court reporters and their staff, professional jury or trial consultants, and professional vendors to whom disclosure is reasonably necessary, and who have signed the Agreement to Be Bound (Exhibit E-1); and

4.3.4 The author or recipient of a document containing the material, or a custodian or other person who otherwise possessed or knew the information.

4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY

1 **CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –**
2 **SOURCE CODE Material to In-House Counsel or Experts.** Unless agreed to in
3 writing by the designator:

4 **4.4.1** A party seeking to disclose to in-house counsel any material
5 designated **HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY** must first make a
6 written request to the designator providing the full name of the in-house counsel, the city
7 and state of such counsel's residence, and such counsel's current and reasonably
8 foreseeable future primary job duties and responsibilities in sufficient detail to determine
9 present or potential involvement in any competitive decision-making. In-house counsel
10 are not authorized to receive material designated **HIGHLY CONFIDENTIAL –**
11 **SOURCE CODE.**

12 **4.4.2** A party seeking to disclose to an expert retained by outside counsel of
13 record any information or item that has been designated **HIGHLY CONFIDENTIAL –**
14 **ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE** must first
15 make a written request to the designator that (1) sets forth the full name of the expert and
16 the city and state of his or her primary residence, (2) attaches a copy of the expert's
17 current resume, (3) identifies the expert's current employer(s), (4) identifies each person
18 or entity from whom the expert has received compensation or funding for work in his or
19 her areas of expertise (including in connection with litigation) in the past five years, and
20 (5) identifies (by name and number of the case, filing date, and location of court) any
21 litigation where the expert has offered expert testimony, including by declaration, report
22 or testimony at deposition or trial, in the past five years. If the expert believes any of this
23 information at (3) - (5) is subject to a confidentiality obligation to a third party, then the
24 expert should provide whatever information the expert believes can be disclosed without
25 violating any confidentiality agreements, and the party seeking to disclose the
26 information to the expert shall be available to meet and confer with the designator
27

1 regarding any such confidentiality obligations.

2 **4.4.3** A party that makes a request and provides the information specified in
3 paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the identified in-house
4 counsel or expert unless, within seven days of delivering the request, the party receives a
5 written objection from the designator providing detailed grounds for the objection.

6 **4.4.4** All challenges to objections from the designator shall proceed under
7 Local Rule 37-1 through Local Rule 37-4.

8 **4.5 Prosecution and Acquisition Bar**

9 **4.5.1** Absent written consent from the Producing Party, no information
10 designated “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” or “HIGHLY
11 CONFIDENTIAL – SOURCE CODE” may be disclosed to Blue Spike, LLC, Blue Spike
12 International Ltd., Wistaria Trading Ltd., or Scott Moskowitz (all collectively, “Blue
13 Spike”) or any person acting on Blue Spike’s behalf before any foreign or domestic
14 agency, including the United States Patent and Trademark Office (“the Patent Office”),
15 relating to the subject matter of this action, including without limitation the products
16 accused of infringement and the patents asserted in this action or any patent or
17 application claiming priority to or otherwise related to the patents asserted in this action.
18 In addition, no person acting on Blue Spike’s behalf who received information marked
19 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” or “HIGHLY
20 CONFIDENTIAL – SOURCE CODE” shall prosecute, or assist in the prosecution of,
21 any patent application owned by Blue Spike relating to the subject matter of this action,
22 including without limitation the patents asserted in this action and any patent or
23 application owned by Blue Spike claiming priority to or otherwise related to the patents
24 asserted in this action, anywhere in the world until two (2) years after final termination of
25 this action, including any appeals. The foregoing does not preclude any person from
26 doing any of the following activities on behalf of a party challenging the validity of a
27

1 patent: filing or participating in a reexamination or an inter partes or other post-grant
2 review, or from otherwise participating in any other proceeding challenging the validity
3 of a patent. For purposes of this paragraph, “prosecution” includes directly or indirectly
4 drafting, amending, advising, or otherwise affecting the scope or maintenance of patent
5 claims in original prosecution before the United States Patent & Trademark Office. This
6 Prosecution Bar shall begin when the affected individual first receives “HIGHLY
7 CONFIDENTIAL – ATTORNEY EYES ONLY” or “HIGHLY CONFIDENTIAL –
8 SOURCE CODE” information and shall end two (2) years after final termination of this
9 action, including any appeals.

10 **4.5.2** Additionally, any individual acting on behalf of Blue Spike that
11 reviews and/or learns, in whole or in part, any technical “CONFIDENTIAL,” “HIGHLY
12 CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY CONFIDENTIAL –
13 SOURCE CODE” information under this Order shall not substantively supervise or assist
14 in the acquisition of any patents related to the subject matter of this action for the purpose
15 of asserting infringement claims against the Producing Party (or any related entity) on
16 behalf of any client or the Receiving Party for two (2) years after final termination of this
17 action, including any appeals.

18 **5. SOURCE CODE**

19 **5.1 Designation of Source Code.** If production of source code is
20 necessary, a party may designate it as HIGHLY CONFIDENTIAL – SOURCE CODE if
21 it is, or includes, confidential, proprietary, or trade secret source code.

22 **5.2 Location and Supervision of Inspection.** Any HIGHLY
23 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made available for
24 inspection, in a format allowing it to be reasonably reviewed and searched, during normal
25 business hours or at other mutually agreeable times, at an office of the designating party’s
26 counsel or another mutually agreeable location. The source code shall be made available
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1 for inspection on a secured computer in a secured room, and the inspecting party shall not
2 copy, remove or otherwise transfer any portion of the source code onto any recordable
3 media or recordable device. The designator may visually monitor the activities of the
4 inspecting party's representatives during any source code review, but only to ensure that
5 there is no unauthorized recording, copying or transmission of the source code.

6 **5.3 Paper Copies of Source Code Excerpts.** The inspecting party may
7 request paper copies of limited portions of source code that are reasonably necessary for
8 the preparation of court filings, pleadings, expert reports, other papers or for deposition or
9 trial. The designator shall provide all such source code in paper form, including Bates
10 numbers and the label "HIGHLY CONFIDENTIAL – SOURCE CODE." A request for
11 more than 20 consecutive pages of source code, or more than 200 pages total of source
12 code, shall require a showing of good cause. In the event of a dispute regarding the
13 reasonableness of the requested paper copies of source code, the parties will meet and
14 confer in good faith in an attempt to resolve the dispute. If the parties cannot reach
15 agreement, the designating party shall promptly seek relief from the Court in accordance
16 with the procedures set forth in Local Rule 37.

17 **5.4 Access Record.** The inspecting party shall maintain a record of any
18 individual who has inspected any portion of the source code in electronic or paper form,
19 and shall maintain all paper copies of any printed portions of the source code in a
20 secured, locked area. The inspecting party shall not convert any of the information
21 contained in the paper copies into any electronic format other than for the preparation of
22 a pleading, exhibit, expert report, discovery document, deposition transcript, or other
23 Court document. Any paper copies used during a deposition shall be retrieved at the end
24 of each day and must not be left with a court reporter or any other unauthorized
25 individual.

**6. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION**

6.2 Notification Requirement. If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items received by that party in this action and designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE, that party must do the following.

6.2.1 Promptly notify the designator in writing. Such notification shall include a copy of the subpoena or court order unless prohibited by law.

6.2.2 Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Order.

6.2.3 Cooperate with all reasonable procedures sought by the designator whose material may be affected.

6.3 Wait For Resolution of Protective Order. If the designator promptly seeks a protective order, the party served with the subpoena or court order shall not produce any information designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE before a determination by the court where the subpoena or order issued, unless the party has obtained the designator’s permission. The designator shall bear the burden and expense of seeking protection of its confidential material in that court.

1 **7. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
3 designated material to any person or in any circumstance not authorized under this Order,
4 it must immediately (1) notify in writing the designator of the unauthorized disclosures,
5 (2) use its best efforts to retrieve all unauthorized copies of the designated material, (3)
6 inform the person or persons to whom unauthorized disclosures were made of all the
7 terms of this Order, and (4) use reasonable efforts to have such person or persons execute
8 the Agreement to Be Bound (Exhibit E-1).

9 **8. INADVERTENT PRODUCTION OF PRIVILEGED OR**
10 **OTHERWISE PROTECTED MATERIAL**

11 When a producing party gives notice that certain inadvertently produced material is
12 subject to a claim of privilege or other protection, the obligations of the receiving parties
13 are those set forth in Fed. R. Civ. P. 26(b)(5)(B). This provision is not intended to modify
14 whatever procedure may be established in an e-discovery order that provides for
15 production without prior privilege review pursuant to Fed. R. Evid. 502(d) and (e).

16 **9. FILING UNDER SEAL**

17 Without written permission from the designator or a Court order, a party may not
18 file in the public record in this action any designated material. A party seeking to file
19 under seal any designated material must comply with Local Rule 79-5 and this Court's
20 Standing Order with respect to the filing of under seal documents. Filings may be made
21 under seal only pursuant to a court order authorizing the sealing of the specific material at
22 issue. The fact that a document has been designated under this Order is insufficient to
23 justify filing under seal. Instead, parties must explain the basis for confidentiality of each
24 document sought to be filed under seal. Because a party other than the designator will
25 often be seeking to file designated material, cooperation between the parties in preparing,
26 and in reducing the number and extent of, requests for under seal filing is essential.

1 Accordingly, counsel are ordered to meet and confer in person or by telephone at least
2 seven (7) calendar days prior to the filing of an application wherein the basis for the
3 sealing is that it has been deemed confidential by the other party. Not later than two (2)
4 calendar days after the meet and confer process, the opposing party shall confirm whether
5 such information shall be designated as confidential or whether it can be made available
6 to the public. Such an application shall contain the dates and method by which the parties
7 met and conferred. If a *receiving party's* request to file designated material under seal
8 pursuant to Local Rule 79-5.1 is denied by the Court, then the receiving party *may file*
9 *the material in the public record* unless (1) *the designator* seeks reconsideration within
10 four (4) days of the denial, or (2) as otherwise instructed by the Court.

11 **10. FINAL DISPOSITION**

12 Within 60 days after the final disposition of this action, each party shall return all
13 designated material to the designator or destroy such material, including all copies,
14 abstracts, compilations, summaries and any other format reproducing or capturing any
15 designated material. The receiving party must submit a written certification to the
16 designator by the 60-day deadline that (1) identifies (by category, where appropriate) all
17 the designated material that was returned or destroyed, and (2) affirms that the receiving
18 party has not retained any copies, abstracts, compilations, summaries or any other format
19 reproducing or capturing any of the designated material. This provision shall not prevent
20 counsel from retaining an archival copy of all pleadings, motion papers, trial, deposition
21 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
22 expert reports, attorney work product, and consultant and expert work product, even if
23 such materials contain designated material. Any such archival copies remain subject to
24 this Order.

1 **IT IS SO ORDERED.**

2 Dated: February 28, 2019

3 

4 HONORABLE JEAN P. ROSENBLUTH

5 UNITED STATES MAGISTRATE JUDGE

EXHIBIT E-1

AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Central District of California on _____ [date] in the case of _____ **[insert formal name of the case and the number and initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment for contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing this Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]